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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/608,538	06/30/2003	Yves Jacob	3495.0188-01	8265

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EXAMINER

LI, BAO Q

ART UNIT PAPER NUMBER

1648

DATE MAILED: 12/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/608,538

Applicant(s)

JACOB ET AL.

Examiner

Bao Qun Li

Art Unit

1648

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 September 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-57 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-57 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

Claims 1-57 are pending.

#### *Election/Restrictions*

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-19, 51-52 and 55, drawn to a polynucleotide, a composition comprising the polynucleotide and a method of using the same, wherein the polynucleotide comprising a coding sequence encoding the site III, C-terminal half, transmembrane and cytoplasmic domains of a lyssavirus glycoprotein, classified in class 536, subclass 23.72.
  - II. Claims 20-34, drawn to a polynucleotide comprising a coding sequence encoding the site II, site III, transmembrane and cytoplasmic domain of a lyssavirus glycoprotein, classified in class 535, subclass 23.72.
  - III. Claims 35-42, drawn to a polypeptide comprising site III polypeptide, , C-terminal half, transmembrane domain and cytoplasmic domain of a lyssavirus glycoprotein, classified in class 424, subclass 192.1.
  - IV. Claims 43-50 and 53, drawn to a polypeptide and composition comprising the polypeptide and method of using the same, classified in class 530, subclass 350.
  - V. Claim 56, drawn to a plasmid with Accession Number 1-2114, classified in class 424, subclass 205.
  - VI. Claim 57, drawn to a plasmid with Accession Number 1-2115, classified in class 424, subclass 205.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions of Groups I-V and VI are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions of group I to VI are structurally different products and they exhibit different biological functions. For example, the polynucleotide of group I and II differ from the polypeptide of group III and IV or plasmid DNA of groups V and VI in that the polynucleotide is made from nucleic acid molecule, whereas the polypeptide is made from amino acid molecule. The plasmid can be a live microorganism that has much more complicated

Art Unit: 1648

structure than just a cDNA of a polynucleotide sequence. Moreover, the polynucleotide and polypeptide require different searches and have different patentable weights. Therefore, they should be separated.

3. Moreover, the polynucleotide in group I and group II are also different from the genetic coding since the polynucleotide of group I does not encode the site II polynucleotide, whereas the polynucleotide of group II encodes the protein including site I and site II. The distinctness of each group requires different searches and cannot be substituted for determining the potentiality for each other.

4. The polypeptide in group III and group IV are also different from the genetic coding since the polypeptide of group I does not encode the site II polypeptide, whereas the polypeptide of group II encodes the protein including site I and site II. The distinctness of each group requires different searches and cannot be substituted for determining the potentiality for each other.

5. The plasmid in group V and group VI are also different in their genetic codes. The distinctness of each group requires different searches and cannot be substituted for determining the potentiality for each other.

6. Because these inventions are distinct for the reasons given above and the search required for Group I is not required for rest of Groups or group II for rest of groups or group III for rest of groups, or group IV for rest of group or group V for rest of groups and group VI for rest of groups. restriction for examination purposes as indicated is proper.

7. Claim 9 is generic to a plurality of disclosed patentably distinct species comprising a). A parasite peptide, b). A bacterial peptide, c). A virus peptide and d). A peptide from a tumor cell. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species, even though this requirement is traversed.

8. Claim 21 is generic to a plurality of disclosed patentably distinct species comprising i). The polynucleotide comprising a sequence encoding a polypeptide of a tumor antigen and ii). The polynucleotide comprising a sequence encoding a polypeptide of a malaria antigen.

9. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species if any one of the claims 9 or 21 is involved in the elected group, even though this requirement is traversed.

Art Unit: 1648

10. Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

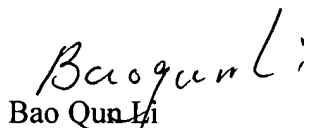
11. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

12. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bao Qun Li whose telephone number is 571-272-0904. The examiner can normally be reached on 7:00 am to 3:00 pm.

14. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Housel can be reached on 571-272-0902. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

15. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Bao Qun Li

12/14/2005